

INDIGENT DEFENSE TRUST FUNDS

Board Meeting Agenda

Division of Finance, 2110 State Office Building, Salt Lake City, Utah 84114

Public Meeting Notice and Agenda

December 2, 2014

11:30 a.m.

1. Welcome:

2. Review and approval of minutes from the meeting held on September 16, 2014.

3. Assignments from the last meeting.

Rick Schwermer will contact Judge Westfall about appointing counsel for Brandon Perry Smith. (Rick contacted Judge Shumate, Gary Pendleton was appointed, a contract has been sent out.)

Paul Tonks will write new language for the standard contract about second counsel after the death penalty has been removed. He will bring the proposed change to the contract to the next meeting for the board to review. (See agenda item 4.)

Paul Tonks will add additional language to the standard contract to define *unforeseen and exceptional circumstances*. The Board will review the additional language at the next meeting. (See agenda item 5.)

Finance will add language to the standard contract about monthly billings, and add to the contract the board approved 10 cents per copy for internal copies. (This language has been added to the standard contract.)

Barbara will send letter to Denise Porter about her term ending. (Barbara talked with Denise Porter and she is willing to stay on the Board for another term.)

4. New language in the standard contract about second counsel after the death penalty has been removed.

5. Additional language added to the standard contract to define “unforeseen and exceptional circumstances.”

6. Fund Balances as of 12/1/14:

7. Review of Current Cases:

Stephanie Sloop-Davis County, Mary Corporon Attorney
Sun Cha Warhola-Davis County, Edward K. Brass Attorney
Thad Douglas Robertson-Iron County, Douglas Terry Attorney
William C. Lawton-Sevier County, James A. Valdez Attorney
Richard Andrew Jones-Washington County, Stephen McCaughey Attorney

Brandon Perry Smith-Washington County, State Counsel has been appointed, no contract yet.
Stephen Crutcher-Sanpete County, Ed Brass Attorney
Glen Howard Griffin appeal-Box Elder County, Jennifer Gowans Attorney
David Drommond appeal-Davis County, Arnold Wiggins Attorney
Robert Cameron Houston appeal, Davis County, John Pace Attorney
Martin Chris Nelson appeal-Iron County, Liz Hunt Attorney

Indigent Inmate Fund Cases Sanpete County, (Gunnison Prison):

Andre Bryant, Doug Neeley Attorney
Steven Crutcher, aggravated murder, Sanpete County, Ed Brass Attorney
Steven Crutcher, additional charges, Doug Neeley Attorney
Abel Castillo, Doug Neeley Attorney

8. Expiring Board Members Terms; and Information on Member Appointments:

9. Other Business:

10. Next Meeting:

INDIGENT DEFENSE TRUST FUNDS BOARD

Meeting Minutes

Division of Finance, 2110 State Office Building, Salt Lake City, Utah 84114

September 16, 2014

11:30 a.m.

Public Meeting Minutes

Attendance - Board Members:

Brody Keisel, Sanpete County Attorney-Chair (absent)
Scott Garrett, Iron County Attorney
Kirk Wood, Duchesne County, Commissioner
James Withers, Millard County, Commissioner (absent)
Richard Gale, Attorney (absent)
Denise Porter, Attorney (absent)
John Reidhead, Director, Division of Finance
Barry Huntington, Garfield County Attorney – Vice Chair
Richard Schwermer, Administrative Office of the Court

Attendance - Staff and Others:

Paul Tonks, Attorney General's Office
Joey Palmiotti, Accountant, Division of Finance
Barbara Sutherland, Administrative Assistant, Division of Finance
Mary Corporon, Attorney (visitor)
Gary Pendleton, Attorney (joined meeting via phone)
Brian Filter, Washington County Attorney, (joined meeting via phone)

Note: A copy of meeting materials, and an audio recording of the meeting can be found on the Public Notice Website.

1. Welcome:

Barry Huntington, Vice Chair, invited everyone to the meeting and asked everyone to introduce themselves.

2. Review and approval of minutes from the meeting held on June 24, 2014.

Scott Garrett had a correction in the minutes in number 5. *Review of Current Cases*. Thad Douglas Roberson-Iron County. The unapproved minutes said that he was in the State Hospital, and that is not correct.

Kirk Wood also had a correction to the minutes in 1. *Welcome* on the agenda, there was a motion to move to agenda items 6 & 7. He feels the language that says; *all board members present voted* should be changed to *all present voted in favor*.

With those changes Scott Garrett moved to approve the minutes. Kirk Wood seconded the motion; all present voted in favor, the motion carried.

3. Washington County Attorney Brian Filter and Gary Pendleton joined the meeting by phone to address the appointment of Mr. Pendleton to the “Rule 8 Qualified” attorney list, and counsel for Brandon Perry Smith.

Gary Pendleton and Brian Filter addressed the Board about counsel for Brandon Perry Smith. Mr. Pendleton was not on the rule “8” qualified list of attorneys when Judge Shumate signed an order appointing him as the defense counsel for Brandon Smith. Judge Westfall is the new judge in Washington County and does not want to sign the order until Mr. Pendleton has been approved by the Board.

This case has been pending since 2010. Mr. Pendleton has been paid \$25,000 from a private source. When the state gave notice of their intent to seek the death penalty is when Mr. Pendleton told the court he would need to have additional counsel with him, and that the family was out of funds. Judge Shumate made a finding that it was within the defendant’s best interest that he continues on the case. Judge Shumate also made a finding that Gary Pendleton was rule 8 qualified.

Rick Schwermer stated that Judge Shumate has the authority to appoint counsel, but does not have the authority to appoint someone to be paid by the Indigent Defense Fund. Mr. Schwermer explained the process to be added to the Rule “8” Qualified pre-contracted attorney list, and to be appointed to a case that is paid by the Indigent Defense Trust Fund.

Gary Pendleton has submitted to the board the information to be considered for the rule “8” qualified list of attorneys.

Mr. Schwermer said the Board will go through the process of considering Mr. Pendleton to be on the Rule 8 Qualified list and then he will follow up with Judge Westfall about an appointment. If Judge Westfall appoints Gary Pendleton to the case, the Judge will need to make another finding that he is Rule 8 qualified.

The Board reviewed Mr. Pendleton’s application and his proof of liability insurance. Scott Garrett made a motion to accept Gary Pendleton to the list of pre-contracted rule 8 qualified attorneys. Kirk Wood seconded the motion. A vote was taken, all present voted to approve Mr. Pendleton to the list.

Rick Schwermer will contact Judge Westfall about the appointment of counsel for Brandon Perry Smith.

Mr. Pendleton asked if he would be paid for work that has been done before there was a signed contract.

Paul Tonks explained that it is the Board’s decision to decide if payment should be made for work done before a contract was in place.

Rick Schwermer explained that the Board approved Mr. Pendleton to be added to the list, now he will need to be appointed pursuant to the contract by the judge, and then Mr. Pendleton will need to submit his billings. The Board will then decide if they will pay for work done prior to the contract.

John Reidhead asked about the \$25,000 that had been paid to Mr. Pendleton from a private source and if it would change the amount that the fund would pay on the contract. No decision to change the contract compensation amount was made.

There was a discussion about authorizing payment to Gary Pendleton for the work he has done on the case without a contract.

Scott Garrett made a motion contingent upon Gary Pendleton being appointed under the contract that the Board reimburses him for work done that is appropriate since January 29, 2014, the date that Judge Shumate appointed Mr. Pendleton to the case. Rick Schwermer seconded the motion. A vote was taken all present voted in favor, the motion carried.

Paul Tonks reiterated that the purpose of the Board is to do things according to the rule that is in place. But, at the same time the board wants to have attorneys compensated for the work they do, as long as it is reasonable and falls within the contract.

4. Mary Corporon to address Board about additional funding on the Stephanie Sloop case.

Kirk Wood moved to close the meeting to discuss the status of the Stephanie Sloop case. Also, to discuss things that would be attorney client privilege which should not be disclosed to the public, but is important for the Board to understand in order to determine funding issues. Scott Garrett seconded the motion. All present voted in favor of closing the meeting. Motion passed. The meeting went into executive session.

Barry Huntington explained that the meeting was out of executive session.

Rick Schwermer made a motion to approve billings from Mary Corporon up to \$140,000 based on the unforeseen and unusual circumstances described by counsel. Kirk Wood seconded the motion, all present voted in favor. Motion passed unanimously.

Mary Corporon thanked the board and left the meeting.

5. Assignments from the last meeting.

1. Send Aric Cramer letter to inform him of the Board's intent to remove him from the pre-contracted list of Rule 8 Qualified Attorneys. (Letter sent on Aug. 5, 2014.)
2. Send Gary Pendleton letter and information to submit back to the Board to be considered for the Rule 8 Qualified list. Judge appointed Mr. Pendleton to the Brandon Smith case. (Sent July 3, 2014)
3. Paul Tonks will look at the contract and the statute, to determine if co-counsel will need to be appointed in the Thad Robertson case.

Paul stated the language in 1. D. of the contract says; that defenders will follow the ABA guidelines for the appointment of counsel in death penalty cases as long as the death penalty is sought. The ABA guidelines require a co-counsel for death penalty cases. Criminal Rule 8 (b) also states if an indigent

defendant is charged with an offense that is punishable by death, then the law states that there will be two or more attorneys to represent the defendant. The Federal statute also requires two attorneys for death penalty cases and goes back to one attorney when the death penalty is removed.

By the contract or by law there is no requirement for the Fund to pay for a second counsel on the Thad Robertson case. The death penalty has been removed and the second counsel withdrew from the case. Doug Terry has been informed of this decision.

The way the current contract is written, second counsel may continue on in the case even if the death penalty is removed. It was discussed changing the language in the contract to say; once the death penalty is pulled, the second counsel would be removed.

Paul Tonks will work on the new language for the contract, and bring it back to the next Board Meeting for approval.

6. Fund Balances as of 9/11/14, and County Assessments for 2015.

Joey Palmiotti reviewed the fund balances. There is \$440,741.67, including the \$42,481.00 pending commitment in the Indigent Capital Defense Trust Fund.

The Indigent Inmate Trust Fund has a balance of \$987,515.02.

The Board reviewed the spreadsheet for the county assessments.

Rick Schwermer moved to approve a full assessment for 2015, Barry Huntington seconded the motion. All present voted in favor to approve a full assessment. Motion passed.

7. Review of Current Cases:

Stephanie Sloop-Davis County, Mary Corporon Attorney, Preliminary hearing in November.

Sun Cha Warhola-Davis County, Edward K. Brass Attorney, Competency issue.

Thad Douglas Robertson-Iron County, Douglas Terry Attorney. Scheduled for jury trial February 6-20, 2015.

David Drommond appeal-Davis County, Arnold Wiggins Attorney. Covering the Effexor issue. Supreme Court agreed with Mr. Wiggins on that part of the appeal.

William C. Lawton-Sevier County, James A. Valdez Attorney, There has not been any new billings. Barbara will check with James Valdez for a status update.

Richard Andrew Jones-Washington County, Stephen McCaughey Attorney,

Sept. 9, 2014 Richard Andrew Jones pled no contest in the 5th District Court for 2 charges of aggravated murder. Case completed except for sentencing hearing.

Brandon Perry Smith-Washington County, Gary Pendleton Attorney,

There has been a preliminary hearing. Washington County rendered their notice to seek the death penalty. Mr. Pendleton filed a motion to quash the decision; the County filed their answer and is waiting for a response pending defense counsel being appointed and under contract. Mr. Pendleton filed an extension for his reply memorandum until they knew if he was going to have a contract to be paid. The judge extended the date for the filing of the reply.

Glen Howard Griffin appeal-Box Elder County, Jennifer Gowans Attorney, Everything has been submitted.

Robert Cameron Houston appeal, Davis County, John Pace Attorney, nothing new.

Martin Chris Nelson appeal-Iron County, Liz Hunt Attorney. Before the Supreme Court, waiting for oral argument.

Indigent Inmate Fund Cases Sanpete County, (Gunnison Prison):

Steven Crutcher, aggravated murder, Sanpete County, Ed Brass Attorney, No billings yet.

Steven Crutcher, additional charges, Doug Neeley Attorney, continuing.

Abel Castillo, Doug Neeley Attorney, continuing.

Jose Willmond, Doug Neeley Attorney, continuing.

8. Contract language changes about monthly billings (see 2 F. in the contract). Define the language in the contract “exceptional circumstances” (see 2 C in the contract) to be more specific. Change contract to \$.10 per copy (see 2 D in the contract).

There was a discussion about adding some language changes in the standard contract. Barry Huntington would like unforeseen an exceptional circumstances defined better. Paul Tonks will review the language and make suggestions for the next meeting.

It was decided to add the language on monthly billings to: Monthly billings are required; if billings go beyond the presumptive cap they still need to be submitted monthly. The Board has the right to decide not to pay charges that are more than three months old that have not been previously submitted (2. F. in the contract). These proposed language changes will be changed and sent out to the board for approval.

John Reidhead made a motion to add the language; internal copies will be reimbursed at 10 cents per copy (3 A. (9) in the contract). Kirk Wood seconded the motion. Motion passed unanimously.

9. Board Members Terms that are Expiring:

There was a discussion about the board members whose terms are expiring Dec. 31, 2014. They are as follows:

Brody Keisel, appointed by the Prosecution Council. (Post Meeting, Brody was reappointed for another 3 year term.)

Barry Huntington, appointed by the Utah Association of Counties. (The Board would like Barry to be appointed to another term.)

Commissioner Kirk Wood, appointed by the Utah Association of Counties. (Retired.)

Commissioner James Withers, appointed by the Utah Association of Counties.

Denise Porter, appointed by the Indigent Defense Fund Board.

Richard Schwermer, appointed by the Administrative Office of the Court. (Court will reappoint.)

Letters have been sent to the Utah Prosecution Council and Utah Association of Counties for board appointments. A letter will be sent to Denise Porter about her term ending and ask her if she would be interested in serving another term.

10. Other Business:

11. Next Meeting: December 2, 2014. 11:30 a.m.

John Reidhead moved to adjourn the meeting, Barry Huntington seconded the motion. Motion carried. Meeting adjourned at 1:15 p.m.

Assignments:

Rick Schwermer will contact Judge Westfall about appointing counsel for Brandon Perry Smith. (Rick contacted Judge Shumate, Gary Pendleton was appointed, a contract has been sent out.)

Paul Tonks will write new language for the standard contract about second counsel after the death penalty has been removed. He will bring the proposed change to the contract to the next meeting for the board to review.

Paul Tonks will add additional language to the standard contract to define *unforeseen and exceptional circumstances*. The Board will review the additional language at the next meeting.

Finance will add language to the standard contract about monthly billings, and add to the contract the board approved 10 cents per copy for internal copies.

Barbara will send letter to Denise Porter about her term ending.

**Indigent Capital Defense Trust Fund
Fund 7261**

Beginning Balance (as of 09/11/2014) 483,222.67

Revenue:

County Assessments (Beaver, Daggett, Kane) 40,974.00

Interest 355.10

Other -

Total Revenue 41,329.10

Expenditures:

Case Expenses

Richard Jones (3,526.32)

Brandon Smith (1,471.40)

Stephanie Sloop (49,318.27)

Total Case Expenditures (54,315.99)

Other Expenditures (863.16)

Total Expenditures (55,179.15)

Ending Balance (as of 12/01/2014) 469,372.62

Pending Commitments (17,244.27)

Revised Ending Balance (as of 12/01/2014) 452,128.35

balance as of 09/11/14

\$483,222.67

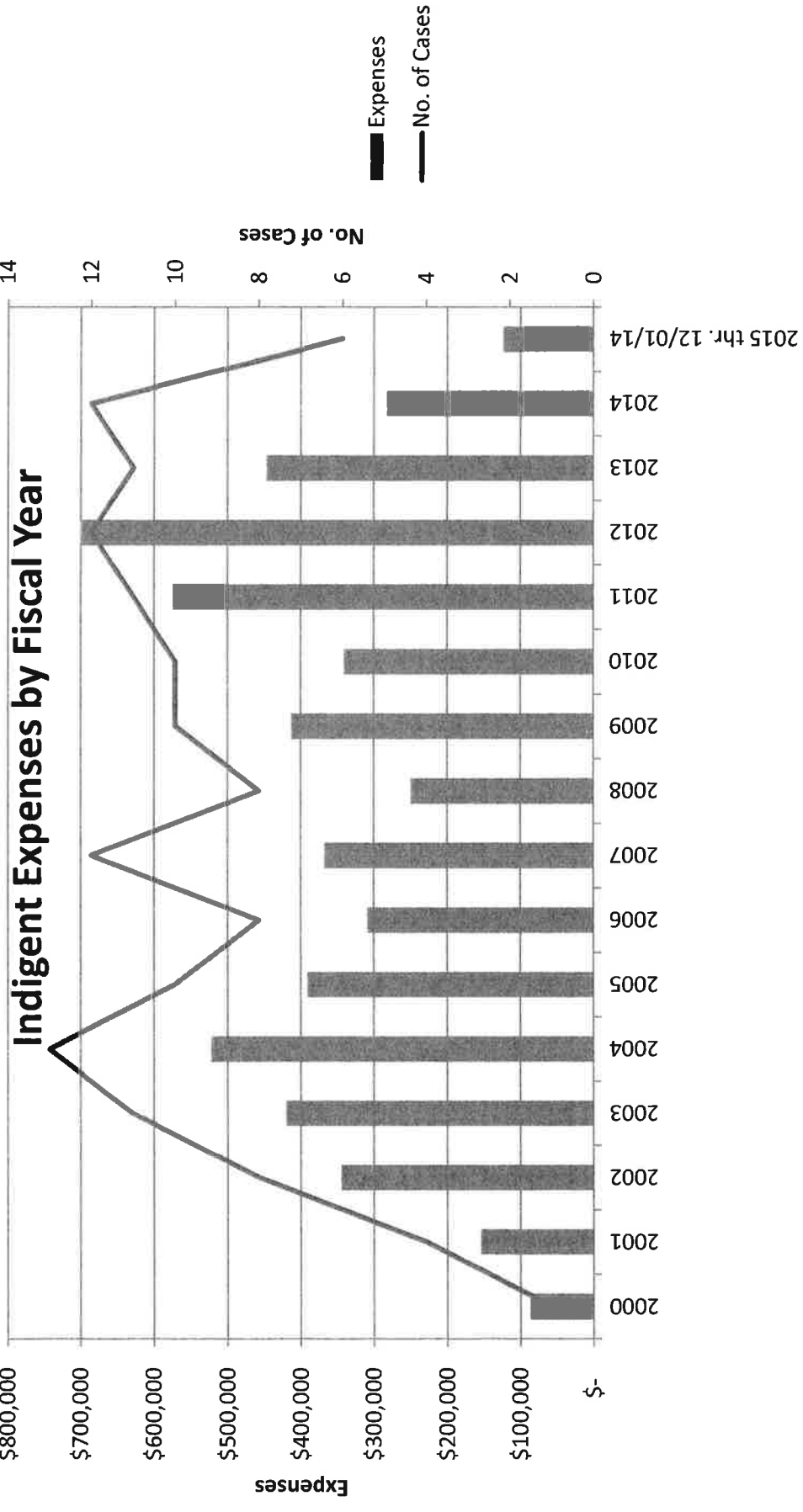
2015	2773	01-Oct-14	4580 0602	01	174.43	201504	01-Oct-14
2015	2773	01-Sep-14	4580 0602	01	180.67	201503	01-Sep-14
2015	09/30/2014 Beaver County Indigent	30-Sep-14	4121 0010	01	5,452.00	201503	30-Sep-14
2015	10/06/2014 INDIGENT FOR DAGGETT COUNTY	06-Oct-14	4121 0010	01	1,238.00	201504	06-Oct-14
2015	10/07/2014 INDIGENT FOR KANE COUNTY	07-Oct-14	4121 0010	01	5,778.00	201504	07-Oct-14
2015	11/26/2014 INDIGENT FOR TOOELE COUNTY	28-Nov-14	4121 0010	01	28,506.00	201504	28-Nov-14
2015	Investigator fees for Jones case 07/10 - 09/10/2014	30-Sep-14	6137	0010	(2,040.00)	201503	30-Sep-14
2015	Attorney expense for Jones case 08/15 - 09/09/2014	30-Sep-14	6135	0010	(552.56)	201503	30-Sep-14
2015	Investigator expenses for Jones case	30-Sep-14	6135	0010	(475.46)	201503	30-Sep-14
2015	Stephen McCaughy travel charges to St. George, UT for Jones case 09/03	07-Nov-14	6007	0010	(297.20)	201504	07-Nov-14
2015	Marissa Sandall Barrus travel charges to St. George, UT for Jones case 09/03	07-Nov-14	6007	0010	(161.10)	201504	07-Nov-14
2015	Janet Dowling travel charges for Brandon Smith case (not S. Sloop case)	11-Sep-14	6057	0010	(784.20)	201503	11-Sep-14
2015	Flight change service fee for Janet Dowling 09/09	07-Nov-14	6057	0010	(25.00)	201504	07-Nov-14
2015	Janet Dowling travel charges to Minneapolis, MN for Smith case 09/03	07-Nov-14	6057	0010	(662.20)	201504	07-Nov-14
2015	Reverse coding for IDT100-S-B. Activity coded as SSLP s/b SMIT	11-Sep-14	6057	0010	784.20	201503	11-Sep-14
2015	Attorney expenses for S. Sloop case	30-Sep-14	6135	0010	(1,607.65)	201503	30-Sep-14
2015	Attorney fees for S. Sloop case 07/06/2011 - 06/20/2014	30-Sep-14	6137	0010	(42,278.50)	201503	30-Sep-14
2015	Attorney fees for S. Sloop case - 06/23 - 10/31/2014	14-Nov-14	6137	0010	(5,057.00)	201505	14-Nov-14
2015	Investigator fees for S. Sloop case 10/22 - 10/30/2014	14-Nov-14	6137	0010	(750.00)	201505	14-Nov-14
2015	Investigator expenses for S. Sloop case	14-Nov-14	6135	0010	(364.00)	201505	14-Nov-14
2015	Attorney expenses for S. Sloop case	14-Nov-14	6135	0010	(45.32)	201505	14-Nov-14
2015	Travel to Indigent Board Meeting in Salt Lake City on 09/16/2014 from Cedar City and return - 504 mi	22-Sep-14	6004	0010	(282.24)	201503	22-Sep-14
2015	Travel to Indigent Board Meeting in Salt Lake City on 09/16/2014 from Duchesne and return - 282 mi	22-Sep-14	6004	0010	(157.92)	201503	22-Sep-14
2015	Travel to Indigent Board Meeting in Salt Lake City on 09/16/2014 from Panguitch and return - 500 mi	22-Sep-14	6004	0010	(280.00)	201503	22-Sep-14
2015	Luncheon for Indigent Defense Board meeting held 09/16/2014	22-Sep-14	6276	0010	(143.00)	201503	22-Sep-14

balance as of 12/01/14

\$469,372.62

Pending Commitments

<i>Case</i>	<i>Payee</i>	<i>Type</i>	<i>Amount</i>
Thad Robertson	Rudiger Investigations	Investigator	\$ 589.92
Richard Jones	Stephen McCaughey	Attorney Expenses	\$ 332.00
Brandon Smith	Jan Dowling	Mitigation Specialist	\$ 5,887.79
Brandon Smith	Jan Dowling	Mitigation Specialist	\$ 3,202.50
Brandon Smith	Jan Dowling	Mitigation Specialist	\$ 1,717.50
Brandon Smith	Jan Dowling	Mitigation Specialist	\$ 5,514.56
			\$ 17,244.27



Indigent Inmate Trust Fund
Fund 7260

Beginning Balance (as of 09/11/2014)	987,515.02
Revenue:	
County Assessments	-
Interest	742.46
Other	-
Total Revenue	<u>742.46</u>
Expenditures:	
Case Expenses	
Steven Crutcher	(17,092.00)
Total Case Expenditures	<u>(17,092.00)</u>
Other Expenditures	
Subtotal Expenditures	<u>(17,092.00)</u>
Ending Balance (as of 12/01/2014)	<u>971,165.48</u>
Pending Commitments	-
Revised Ending Balance (as of 12/01/2014)	<u>971,165.48</u>

2015	JVDP0505TAD0000014	7260	1257		4580	0602	01		374.89	201503		01-Sep-14
2015	JVDP0505TAD0000026	7260	1257		4580	0602	01		367.57	201504		01-Oct-14
2015	AD1005A0000121586	7260	Attorney fees Crutcher Capitol case 11/18/2013 - 10/02/2014		6137		0010	01	(17,092.00)	201505	GAX100550000000055	03-Nov-14
										\$987,515.02	balance as of 09/11/14	
										\$971,165.48	balance as of 12/01/14	

(2) If the death penalty is not sought:

(a) Up to \$20,000.00 upon completion or waiver of the preliminary hearing.

(b) Up to an additional \$20,000.00 after completion or waiver of the preliminary hearing up to commencement of the trial. For the purposes of this contract, the trial shall be deemed to commence upon the first witness being sworn.

(c) Up to an additional \$20,000.00 after commencement of the trial up to the conclusion of the trial by verdict and completion of the penalty phase, if applicable.

(d) The second chair's right to receive compensation under this contract will terminate at the time the death penalty is no longer sought by the State of Utah, with lead counsel thereafter assuming all duties as sole counsel for Defendant.

Current Contract Language

2. Compensation

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C. The Parties have agreed that the amounts and timing of compensation set forth in this contract are reasonable and adequate. The Parties further agree that the presumptive caps in paragraphs 2A and 2B shall be binding and shall operate to limit the timing and amount of total compensation paid to Defenders and that there shall be no right to receive additional compensation unless prior written approval is obtained from the Board. Defenders may request that the Board exceed the maximum amounts listed in paragraph 2A and 2B based upon a showing of Exceptional Circumstances.

To establish exceptional circumstances, the DEFENDERS must demonstrate to the Board that compensation provided by paragraphs 2A and 2B is unreasonably inadequate in light of the length and complexity of the litigation which length and or complexity was not reasonably foreseeable at the time the Parties entered into this Contract.

Proposed Contract Language

2. Compensation

...

C. The Parties have agreed that the amounts and timing of compensation set forth in this contract are reasonable and adequate. The Parties further agree that the presumptive caps in paragraphs 2A and 2B shall be binding and shall operate to limit the timing and amount of total compensation paid to Defenders and that there shall be no right to receive additional compensation unless prior written approval is obtained from the Board. Defenders may request that the Board exceed the maximum amounts listed in paragraph 2A and 2B based upon a showing of Exceptional Circumstances.

To establish exceptional circumstances, the DEFENDERS must demonstrate to the Board that compensation provided by paragraphs 2A and 2B is unreasonably inadequate in light of the length and complexity of the litigation which length and or complexity was not reasonably foreseeable at the time the Parties entered into this Contract. **Exceptional circumstances is defined as circumstances related to the case that were not reasonably foreseeable at the time the Parties entered into this Contract. Failure by the DEFENDERS to request additional compensation at the time the Parties enter into this Contract for foreseeable circumstances related to the case is considered a waiver of any future requests for additional compensation related to those foreseeable circumstances, and the DEFENDERS shall be required to work within the presumptive caps in paragraphs 2A and 2B even if the total amount of work within the presumptive cap results in an hourly rate that is less than the hourly rate that is authorized by the Board in paragraph 2A of this Contract.**